

## DEPARTMENT OF INDUSTRIAL RELATIONS

**INDUSTRIAL MEDICAL COUNCIL**

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**Title 8. Industrial Medical Council****Initial Statement of Reasons**

Labor Code section 139.2 (j)(2) requires the Industrial Medical Council (IMC) to promulgate rules and regulations concerning "procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury." The IMC has previously adopted evaluation protocols concerning various injuries to other parts of the body. 8 Cal. Code of Regs. §§ 40-47. The IMC seeks to promulgate a methodology of evaluating injuries to the foot and ankle.

The purpose of these regulations is to ensure that all physicians who perform medical evaluations in a manner to produce complete accurate, uniform and replicable evaluations.

**Statement of Necessity**

The IMC has determined that the proposed regulations are necessary to the effectiveness of evaluations of foot and ankle injuries. The IMC is required promulgate this evaluation protocol to fulfil its mandate set forth in Labor Code section 139.2 (j)(1). All physicians in the evaluating the existence and extent of permanent impairments and limitations resulting from a foot or ankle injury must use this protocol. Labor Code § 139.2 (j)(2).

**Reliance on Data**

The IMC has not relied on any special data in promulgating these regulations.

**Materials relied upon is this Rulemaking**

The Council consulted 8 C.C.R. § 9725, that specifies use of "Evaluation of Industrial Disability" edited by Packard Thurber, Second Edition, Oxford University Press, New York, 1960 (Packard Thurber), as the method for measuring the physical elements of a disability. The Council has consulted and relied upon the provision of 8 C.C.R. § 9727 for describing subjective disability. The IMC also consulted the provisions of the Schedule for Rating Permanent Disabilities (the Rating Schedule), promulgated by the Administrative Director of the Division of Workers' Compensation. Labor Code section 4660 authorizes the Administrative Director to promulgate the Rating Schedule. The Council consulted the Rating Schedule to determine if the specific actions or procedures described in these regulations were

consistent with procedures for rating disabilities of the cervical spine utilized in the workers' compensation system.

Copies of this material are contained in the rulemaking file maintained by the IMC.

### **Consideration of Alternatives**

The IMC needs to determine that there are no alternatives to the proposed regulation that would be more effective in carrying out the purpose of Labor Code section 139 (j) or would be less burdensome than the proposed regulations. These regulations prescribe specific actions or procedures to determine the nature and extent of a foot or ankle impairment. The IMC shall consider the use of performance standards as an alternative to these regulations that also meet the needs of the workers' compensation community. The guideline used nationally is the American Medical Association's Guide to the Evaluation of Permanent Impairment. Instead of the American Medical Association's Guide, California has adopted the Rating Schedule pursuant to Labor Code section 4660.

There is a need for evaluation protocols for the evaluation and assessment of foot and ankle disabilities. The current guidelines do not specifically address the evaluation of foot and ankle injuries.

### **Section added: 46.1 (I)**

8 C.C.R. 46.1-Section I-Introduction-A Basic purpose of Guideline

8 C.C.R. 46.1-Section I-Introduction-B General Approach

#### **Specific Purpose of the section**

These introductory sections give the examining physician a general approach to the conduct of a comprehensive medical examination.

#### **Factual basis that the Amendment is necessary**

Some medical evaluators who are treating physicians have little contact with the workers compensation system. This section clarifies who can take the history from the patient and evaluate the injured worker past medical history from the medical records provided. Some physicians do not identify or highlight discrepancies in the medical records. This section clarifies that the physician shall identify and clarify any discrepancies from either the history of the injured worker or that is contained in the medical records.

### **Section added: 46.1 (II)**

Section II, the Component Parts of the Report section, set forth the issues physicians must address in a comprehensive medical legal report. The IMC patterned this part of the guideline on section 10606 of title 8 of the California Code of Regulation. This section is divided into sixteen sections and provides an explanation of the requirements of the different elements of a comprehensive medical examination and a comprehensive medical report to the medical examiner.

## **8 C.C.R. 46.1-Section II-Components of the Report-A Initial Page**

### Specific Purpose of the section

This section of the guideline informs the physician what is required in the first page of every comprehensive medical report.

### Factual basis that the section is necessary

In the case of medical reports performed by Qualified Medical Examiners, the physician must identify who engaged the physician's services. The Judges of the Workers' Compensation Appeals Board (WCAB) have indicated that they receive reports, which they cannot attribute to any party. A report of the time spent with the injured worker, known as "face to face" time, is required in reported in every medical report.

## **8 C.C.R. 46.1-Section II-Components of the Report-B History**

### Specific Purpose of the section

This section requires the physician to take a complete medical and occupational history from the injured worker, noting any discrepancies between, and among the various sources of the history.

### Factual basis that the Section is necessary

Section 10606 (b) and (e), respectively, requires a physician to take a history of the current injury and a general medical history, including past injuries, conditions and any residuals. These sections make specific the extent of the history taken from the injured worker by the examining physician. The extent of the history is important because to determine the permanent disability of an injured worker a comparison of pre injury versus post injury capacity is often needed by the WCAB.

## **8 C.C.R. 46.1-Section II-Components of the Report-C Current Complaints**

### Specific Purpose of the section

During an examination, the physician is required to catalog the injured workers current complaints related to the industrial injury using the patient's own words.

### Factual basis that the section is necessary

Section 10606(c) requires a physician to note the injured workers current complaints. The physician is required to characterize the worker's complaints into subjective factors of disability for rating purposes. 8 C.C.R. § 9727.

## **8 C.C.R. 46.1-Section II-Components of the Report-D Medical Reports Reviewed**

### Specific Purpose of the section

This provision requires the physician to list all records reviewed in the preparation of the report.

### Factual basis that the section is necessary

The WCAB receives the medical report of a treating physician or a medical examiner either qualified or agreed; instead of live direct testimony. 8 C.C.R § 10606. The accuracy and credibility of the report is based, in part, on the accuracy of the history relied on by the examiner. *Minniear v. Mt. San Antonio Community College Dist.* (1996) 61 Cal.Comp.Cases 1055; *see also Kuelen v. Workers' Comp. Appeals Bd.* (1998) 66 Cal.App.4th 1089, 1096.

## **8 C.C.R. 46.1-Section II-Components of the Report-E Physical Examination of the Foot and Ankle for Disability Evaluation**

### Specific Purpose of the section

The physical examination section describes the nature and extent of the physical examination necessary to produce an adequate medical legal report.

### Factual basis that the section is necessary

The necessity of this section is to describe the physical examination of the injured worker by the examiner. The nature of the examination is driven by the Rating Manual and Packard Thurber. The goal of the foot examination described in this section is to produce a medical report that is ratable by the Disability Evaluation Unit. The Rating Manual section on lower extremity disabilities at pages 2-16 to 2-19 describe a broad range of factors of disability that can form the basis for a permanent disability rating. Packard Thurber provides the physician with instruction on how to take measurements of the foot and ankle, and provides the examiner with estimated normal measurements for comparison purposes.

## **8 C.C.R. 46.1-Section II-Components of the Report-F Diagnostic Studies in Lower Extremity Disability Evaluation**

### Specific Purpose of the section

The section on diagnostic studies sets forth the circumstances for performing tests and the documentation necessary to support the tests performance of the procedures preformed.

### Factual basis that the section is necessary

This section is necessary because physicians use diagnostic studies to support a diagnosis or help influence the physician's recommendation for possible medical care in the future. There is a need to determine what diagnostic studies are routine and what studies require further justification in the report. A description of the assessment tools used by the physician is required to let either the DEU or WCAB judges determine the credibility of the report.

## **8 C.C.R. 46.1-Section II-Components of the Report-G Diagnosis**

### Specific Purpose of the section

Requires the physician to list the relevant diagnosis(es) revealed during the examination.

### Factual basis that the section is necessary

Section 10606(g) element requires the physician to diagnose the conditions or conditions caused by the injury. This is necessary to measure the reasonableness of past and future medical care, in some cases whether work caused the injury and as a baseline to rate the disability resulting from the injury.

## **8 C.C.R. 46.1-Section II-Components of the Report-H Opinions & Discussion**

### Specific Purpose of the section

This section requires the examining physician to state their opinions and discuss the reasons for the opinion about the injured workers injury.

### Factual basis that the section is necessary

This section is necessary because the examining physician is required to express and support their opinions with the facts elicited from the examination, the history elicited from the injured worker and

the medical and other records reviewed. The opinion and discussion section of the report helps Workers' Compensation Judges, and others, assess the basis for the opinions in the report.

#### **8 C.C.R. 46.1-Section II-Components of the Report-I Causation**

##### Specific Purpose of the section

This provision requires the physician to state whether work caused the injured workers.

##### Factual basis that the section is necessary

This section is necessary because the basis for liability for workers' compensation benefits is based on the injury arising out of and being caused by work.

#### **8 C.C.R. 46.1-Section II-Components of the Report-J Permanent and Stationary**

##### Specific Purpose of the section

Requires the physician to state whether the injured workers condition has reached the legal status of being permanent and stationary.

##### Factual basis that the section is necessary

The determination of permanent and stationary status is necessary because the type of benefits paid to the worker, and other rights, are based on whether the injured worker is permanent and stationary.

#### **8 C.C.R. 46.1-Section II-Components of the Report-K Temporary Disability**

##### Specific Purpose of the section

If the injured worker is not permanent and stationary, the examining physician is required to describe the current work restrictions that might allow the worker to return to work immediately. In addition, the examiner should outline any additional treatment and the anticipated length of time necessary to achieve permanent and stationary status.

##### Factual basis that the section is necessary

This section is necessary because the opposite of permanent and stationary is temporarily disabled. Like permanent and stationary status, an injured worker who is temporarily disabled has certain rights and benefits that attach. The requirement for describing work restrictions is necessary to facilitate the policy goal of early return to work for injured workers. A description of work restrictions is necessary to inform the worker and the employer of the work restrictions that would allow the worker to return to work.

#### **8 C.C.R. 46.1-Section II-Components of the Report-L Factors of Disability**

##### Specific Purpose of the section

The factors of disability section illustrate the ways in which an examining physician may characterize the permanent disability of an injured worker.

##### Factual basis that the section is necessary

The goal of the foot examination described in this section is to produce a medical report that is ratable by the Disability Evaluation Unit. The descriptions of the characterization of rating factors for lower extremity disabilities in the Rating Manual. Rating Manual at pages 2-16 to 2-19.

## **8 C.C.R. 46.1-Section II-Components of the Report-M Apportionment**

### Specific Purpose of the section

If the injured worker is permanent and stationary, the examining physician is required to consider if any permanent disability is subject to the rules of apportionment.

### Factual basis that the section is necessary

This section is necessary because apportionment is one of the most overlooked issues in Workers compensation medical-legal reports. Section 10606(l) also requires the physician consider apportionment in appropriate cases. The purpose of listing the three statutory types of apportionment is to remind the physician consider the issue while taking the history and reviewing the records provided by the parties.

## **8 C.C.R. 46.1-Section II-Components of the Report-N Further Medical Care**

### Specific Purpose of the section

This provision requires the physician to give their opinion about the nature and extent of any future medical that may be necessary to cure and relieve the injured worker of the effect of their industrial injury.

### Factual basis that the section is necessary

This section is required because the opinion of a physician is necessary to support an award of future medical care to an injured worker, without an opinion on the medical care a Workers' Compensation Judge cannot award the benefit.

## **8 C.C.R. 46.1-Section II-Components of the Report-O Vocational Rehabilitation**

### Specific Purpose of the section

The examining Physician should state whether the injured worker is medically eligible for vocational rehabilitation.

### Factual basis that the section is necessary

For an injured worker to become a "Qualified Injured Worker", entitled to rehabilitation services and benefits, the worker must meet the requirements of Labor Code section 4635. Labor Code section 4635 contains a two part test that requires an injured worker be both medically eligible and vocationally feasible. Medical eligibility is defined as: "[t]he employee's expected permanent disability as a result of the injury, whether or not combined with the effects of a prior injury or disability, if any, permanently precludes, or is likely to preclude, the employee from engaging in his or her usual occupation or the position in which he or she was engaged at the time of injury...."

## **8 C.C.R. 46.1-Section II-Components of the Report-P Affirmations and Signature**

### Specific Purpose of the section

This section sets forth a model of the required affirmations under Labor Code section 4628.

### Factual basis that the section is necessary

The affirmation in this section is required of any physician who signs the medical-legal report. The text in the regulation appears at Labor Code section 4628(j).

## **8 C.C.R. 46.1-Section II-Appendix A- Muscle Grading Charts**

### Specific Purpose of the section

This is a compilation of various muscle grading systems that a physician may use in their comprehensive medical report.

### Factual basis that the section is necessary

Weakness of an extremity is a factor in rating permanent disability. *See* the Rating Manual at 2-16 n. 35. The grading charts presented in the Appendix A help physicians characterize the loss of strength.

## **8 C.C.R. 46.1-Section II-Appendix B- Description of severity**

### Specific Purpose of the section

Appendix B is a reprint of the substance of section 9727 of title 8 of the California Code of Regulation that defines the term subjective disability.

### Factual basis that the section is necessary

This section is contained in the regulation for the convenience of the physician who may not have access to the California Code of Regulation.

## **8 C.C.R. 46.1-Section II-Appendix C- Description of activities**

### Specific Purpose of the section

Appendix C states and defines commonly used terms in the medical-legal evaluation process. *See* the Rating Manual at 2-19.

### Factual basis that the section is necessary

The purpose of this section is to define the terms used to define the terms used in the work capacity guidelines of the Rating Schedule.

## **Local Mandates**

The IMC has determined that these regulations do not mandate any programs upon local agencies or school districts.